

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BENONI AMPONSAH, RONALD)
BROOKS, BRUCE CASE, HENRY)
COOPER, PEDRO DAVILA,)
ALBERT EXUM, DOMINIQUE)
FENNELL, CODY GARDINO,)
JAMES GLADDEN, JODI HODGES,)
ANTHONY JELKS, AMEER)
LAWTON, CHARLES)
MCWILLIAMS, MICKONEN)
MICKAEL, KERRY PAGE, DEREK)
PEGUES, HERU TCHAAS, CALVIN)
WILLIAMS, COURTNEY GAYLE,)
JOSE ISTURIZ, WINSTON TEW, and)
OLBIN VELEZ,)

Case No. 1:14 -CV-03314-ODE

Plaintiffs,)
)

vs.)
)

DIRECTV, INC., DIRECTV, LLC,)
MASTEC NORTH AMERICA, INC.,)
and MULTIBAND CORP.,)

Defendants.)
)

DEFENDANTS' MASTEC NORTH AMERICA, INC., DIRECTV, INC. AND
DIRECTV, LLC'S MOTION TO DISMISS

Defendants MasTec North America, Inc. ("MasTec"), and DIRECTV, Inc. and DIRECTV, LLC (together, "DIRECTV," and collectively with MasTec, "Defendants"), hereby move, pursuant to Fed. R. Civ. Proc. 12(b)(6), to dismiss the Complaint of Plaintiffs Benoni Amponsah, Ronald Brooks, Bruce Case, Henry Cooper, Pedro Davila, Albert Exum, Dominique Fennell, Cody Gardino, Courtney Gayle, James Gladden, Jodi Hodges, Jose Isturiz, Anthony Jelks, Ameer Lawton, Charles McWilliams, Mickonen Mickael, Kerry Page, Derek Pegues, Heru Tchaas, Winston Tew, Olbin Velez and Calvin Williams ("Plaintiffs") as against Defendants. The Motion is brought on the following three grounds.

First, Plaintiffs fail to plead facts sufficient to support a reasonable inference that they actually received less than the minimum wages or overtime pay they were due in connection with any given workweek. Although Plaintiffs implicitly challenge the "piece-rate" system pursuant to which they were purportedly paid, there is nothing inherently unlawful about such a system under the FLSA. Moreover, Plaintiffs fail to allege specific facts to show how their purported "piece-rate" pay violated the FLSA. For example, Plaintiffs fail to allege how and when the "piece-rate" system ever operated to deprive one of them of wages that he was due for hours that he actually worked in any given

workweek. Similarly, Plaintiffs' generalized assertions about "charge backs" and unreimbursed expenses are insufficient to establish a plausible claim for underpayments with respect to any particular workweek. Although Plaintiffs do allege that they were "routinely" underpaid, it is well settled that such conclusory terms alone are insufficient to satisfy the *Iqbal/Twombly* pleading standards.

Second, Plaintiffs' FLSA claims should be dismissed because the Complaint fails to plead facts sufficient to support a plausible claim that DIRECTV or MasTec was the FLSA "employer" of any Plaintiff. Although each Plaintiff alleges that he "worked for" DIRECTV and MasTec, none of the Plaintiffs alleges facts sufficient to show that he was actually employed by either of the Defendants -- "jointly" or otherwise -- or that Defendants can be held liable for any "unlawful" wage payments made by the Subcontractor Firms for which Plaintiffs did directly work. Indeed, as to those Subcontractors, the Complaint fails to identify a single such Firm, much less allege any facts to make plausible Plaintiffs' implicit claim that any unidentified Firm was an "employer" subject to the FLSA, and also the "joint employer" of any Plaintiff along with one or more of the Defendants.

Third, and irrespective of the Court's ultimate findings with respect to the

foregoing, the claims of many of the Plaintiffs against MasTec and/or DIRECTV can and should be dismissed as time-barred.

The bases for this Motion are further explained in the attached Memorandum of Law, which is incorporated herein.

DATED: January 27, 2015

Respectfully submitted,

/s/ Henry M. Perlowski

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CERTIFICATE OF COMPLIANCE

By his signature below, and as required by Local Rule 7.1.D., counsel for Defendants DIRECTV, LLC, DIRECTV, Inc. and MasTec North America, Inc. certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.B, namely, Book Antiqua (13 point).

Respectfully submitted, this the 27th day of January, 2015.

/s/ Henry M. Perlowski
Henry M. Perlowski

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of January, 2015, he electronically filed the foregoing document with the Clerk of Court using the CMF/ECF system, which will send notification of such filing to all counsel of record:

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